

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

June 25, 2002

IN RE:

GRANDVIEW CEMETERY COMPANY

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)

DOCKET NO.
02-00494

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on June 11, 2002, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and Grandview Cemetery Company ("Grandview") relating to alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes.¹ The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code Ann. § 65-4-405(d) provides that persons or entities desiring to make telephone solicitations to residential subscribers shall pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations. Tenn. Comp. R. & Reg. 1220-4-11-.04(4) provides that the annual fee to register in the Do-Not-Call Program shall be paid by

¹ See Tenn. Code Ann. § 65-4-401 *et seq.*

May 1st of each year and “shall cover the time period from the following July 1st through June 30th of the following years or any part thereof.”

Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.² “Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”³ The maximum fine faced by Grandview in this proceeding is four thousand dollars (\$4,000) arising from the single complaint and the failure to re-register in the Do-Not-Call Program.

Grandview originally registered in the Tennessee Do-Not-Call Program as a telephone solicitor on July 20, 2000. On two (2) occasions between April and July, 2001, the CSD provided Grandview with written notice regarding the expiration of its registration in the Do-Not-Call Program on July 30, 2001. Grandview did not re-register in the Do-Not-Call Program in 2001.

The investigation in this docket commenced on March 20, 2002, when the CSD received a complaint alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation on March 6, 2002. The CSD provided Grandview with notice of this complaint on March 28, 2002.

The proposed Settlement Agreement was negotiated as the result of the CSD’s investigation into the complaints against Grandview. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The

² See Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

³ Tenn. Code Ann. § 65-4-405(f).

amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

Grandview Cemetery Company is located in Maryville, Tennessee. It employs approximately ten (10) persons in the state of Tennessee. After receiving notice of the complaint, Grandview immediately contacted the CSD and expressed an interest in resolving this matter. In addition, Grandview re-registered with the TRA as a telephone solicitor on April 3, 2002. CSD received no additional complaints from Tennessee consumers arising after Grandview received notice of the violations on March 28, 2002.

As a part of this Settlement Agreement, Grandview agrees to implement measures, as outlined in Exhibit A, to prevent similar occurrences in the future. Grandview will pay three thousand five hundred dollars (\$3,500.00) in settlement of these violations and agrees to remit the amount of two thousand dollars (\$2,000.00) to the Office of the Executive Secretary of the TRA no later than thirty (30) days from the date the Directors of the TRA approve this Settlement Agreement. The remaining two (2) installments of one thousand dollars (\$1,000.00) and five (5) hundred dollars (\$500.00) each shall be remitted to the TRA no later than the first business day of each month for the next two (2) consecutive months. Upon payment of the amount of three thousand five hundred dollars (\$3,500.00) in compliance with the terms and conditions of this Settlement Agreement, Grandview is excused from further proceedings in this matter.

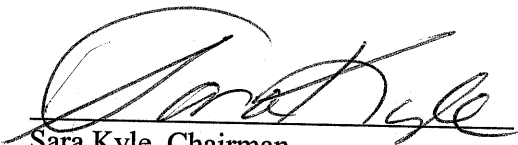
A company representative participated telephonically during the Authority Conference on June 11, 2001. Following a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

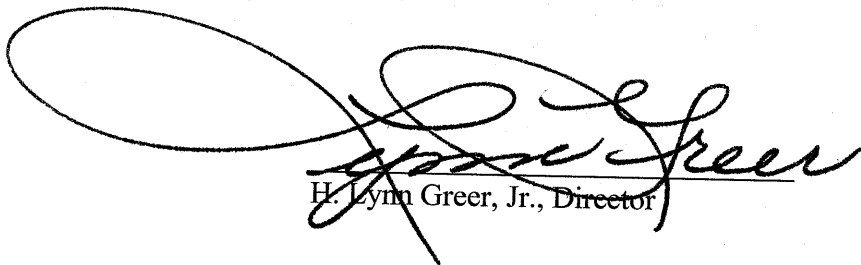
IT IS THEREFORE ORDERED THAT:

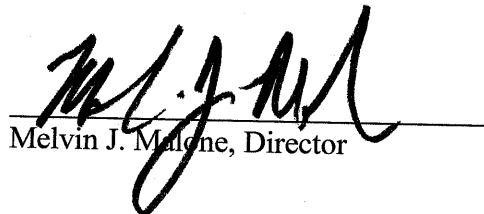
1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.

2. The amount of three thousand five hundred dollars (\$3,500) shall be paid by Grandview into the Public Utilities Account of the TRA. Grandview shall remit the amount of two thousand dollars (\$2,000.00) to the Office of the Executive Secretary of the TRA no later than thirty (30) days from the date the Directors of the TRA approve this Settlement Agreement. The remaining two (2) installments of one thousand dollars (\$1,000.00) and five hundred dollars (\$500.00) each shall be paid to the TRA no later than the first business day of each month for the next two (2) consecutive months.

3. Upon payment of the amount of three thousand five hundred dollars (\$3,500), Grandview is excused from further proceedings in this matter, provided that, in the event of any failure on the part of Grandview to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

RECEIVED
CONSUMER SERVICES DIVISION

MAY 14 2002

TN REGULATORY AUTHORITY

IN RE:

ALLEGED VIOLATIONS OF TENN.
CODE ANN. §65-4-401 *et seq.*, DO-NOT-
CALL SALES SOLICITATION LAW,
AND RULES OF TENNESSEE
REGULATORY AUTHORITY, CHAPTER
1220-4-11, BY:

GRANDVIEW CEMETERY COMPANY

DOCKET NO. 02-00494

DO-NOT-CALL T02-00182
PROGRAM
FILE NUMBERS

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Grandview Cemetery Company ("Grandview Cemetery" or the "Company"). This Settlement Agreement pertains to one (1) complaint received by the CSD alleging that Grandview violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, TENN. CODE ANN. § 65-4-401, *et seq.*, and TENN. COMP. R. & REGS. 1220-4-11.07, and is subject to the approval of the Directors of the TRA.

TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the

EXHIBIT A

TRA of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires that persons or entities desiring to make telephone solicitations to residential subscribers shall pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations. Tenn. Comp. R. & Reg. 1220-4-11-.04(4) provides that the annual fee to register in the Do-Not-Call Program shall be paid by May 1st of each year and "shall cover the time period from the following July 1st through June 30th of the following years or any part thereof."

Grandview Cemetery registered in the Tennessee Do-Not-Call Program as a solicitor on July 20, 2000. On two (2) separate occasions between April and July 2001, the CSD provided Grandview Cemetery with written notice regarding the expiration of its registration in the Do-Not-Call Program on June 30, 2001. Grandview Cemetery did not re-register in the Do-Not-Call Program in 2001.

The CSD's investigation in this docket commenced after it received a complaint on March 20, 2002 alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Grandview Cemetery on March 6, 2002. The CSD provided the Company with notice of this complaint on March 28, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Grandview Cemetery in this proceeding is four thousand dollars (\$4,000), arising from the one (1)

telephone solicitation and the Company's failure to re-register in the Do-Not-Call Program.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. Grandview Cemetery is located in Maryville, Tennessee. It employs approximately ten (10) persons in the state of Tennessee. During the investigation of the complaints, Grandview Cemetery exhibited good faith in its efforts to resolve this matter. After receiving notice of the complaints, Grandview Cemetery immediately contacted the CSD and expressed an interest in resolving this matter. In addition, Grandview Cemetery re-registered with the TRA as a telephone solicitor on April 3, 2002. CSD has received no additional complaints from Tennessee consumers since Grandview Cemetery received notice of the violations.

In an effort to resolve these complaints, represented by the file numbers above, CSD and Grandview Cemetery agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

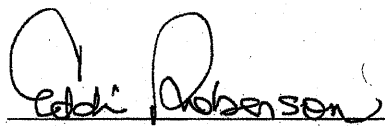
1. Grandview Cemetery admits that the one (1) complaint against it is a true and valid complaint and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Since receiving notice of the complaints that are the subject of this Agreement, Grandview Cemetery has exhibited good faith in its efforts to come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1). Grandview Cemetery contacted CSD and expressed an interest in resolving this matter.

In addition, Grandview Cemetery re-registered with the TRA as a telephone solicitor on April 3, 2002 and receives a monthly copy of the Do-Not-Call register.

3. Grandview Cemetery agrees to pay three thousand five hundred dollars (\$3,500.00) in settlement of these complaints, and agrees to remit the amount of two thousand dollars (\$2,000.00) to the Office of the Executive Secretary of the TRA no later than thirty days from the date the Directors of the TRA approve this Settlement Agreement.¹ The remaining two (2) installments of one thousand dollars (\$1,000.00) and five hundred dollars (\$500.00) respectively shall be remitted to the TRA no later than the first business day of each month for the next two (2) consecutive months. Upon payment of the amount of three thousand five hundred dollars (\$3,500.00) in compliance with the terms and conditions of this Settlement Agreement, Grandview Cemetery is excused from further proceedings in this matter.
4. Grandview Cemetery agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. If any clause, provision or section of this Settlement Agreement shall, for any reason, is held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

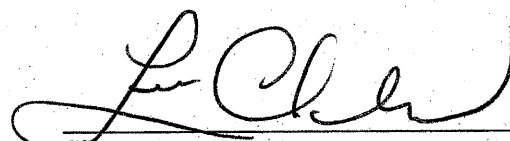
¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket No. 02-00494.

6. This Settlement Agreement represents the entire agreement between the parties, and there are no representation, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.
7. Grandview Cemetery agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
8. In the event that Grandview Cemetery fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. Grandview Cemetery shall pay any and all costs incurred in enforcing the Settlement Agreement.



Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority
5/15/02

Date



Signature
LEE CHAMBERS

Print Name
PRESIDENT

Print Title
5-8-02

Date